

Deposition of George Pete Cortez

Virginia Barrera vs. MTC., Inc. d/b/a Mi Tierra Cafe and Bakery

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

COPY

VIRGINIA BARRERA

Plaintiff

v.

MTC, INC. d/b/a MI TIERRA CAFÉ
AND BAKERY

Defendant

CIVIL ACTION NO.
5:10-cv-665

Cox Smith Matthews Incorporated

RECEIVED

ORAL AND VIDEOTAPED DEPOSITION OF GEORGE P. CORTEZ

VOLUME 1

NOVEMBER 5, 2010

ORAL AND VIDEOTAPED DEPOSITION of GEORGE P.
CORTEZ, produced as a witness duly sworn by me at the
instance of the PLAINTIFF, taken in the above-styled
and numbered cause on the 5th day of November, 2010,
from 9:08 a.m. to 11:36 a.m., before NATALIE
HUNSUCKER, Certified Court Reporter No. 4279 in and
for the State of Texas, at the offices of COX SMITH
MATTHEWS INCORPORATED, 112 E. Pecan Street, Suite
1800, San Antonio, Texas 78205, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached therein.

EXHIBIT A

Deposition of George Pete Cortez

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1 the top of my head, I cannot think of any of the --
2 the service bartenders that are -- there we're taking
3 a tip credit on.

4 Q. There may or may not be?

5 A. There may or may not be, but I don't -- I
6 cannot think of anybody right now.

7 Q. And if I asked you to supply me a list of
8 individuals that are currently being paid under 7.25,
9 how would you go about compiling that list?

10 A. I mean, we would -- I'm sure we could run a
11 report, you know, by department, you know, that shows
12 the wages of each, you know, employee.

13 Q. And you would do that internally?

14 A. Yes.

15 Q. Okay. I was flipping through some of these
16 pay stubs or these earning statements of Virginia
17 Barrera and noticed that there are deductions for
18 meals on each earning statement. How does that work?

19 A. Can I see it?

20 Q. Sure. I don't know if that one has a meal.
21 I was -- Some of them do, it seems, and maybe some
22 don't.

23 A. Yeah. I -- I don't -- I don't see that on
24 this one. But, I mean, typically, you know, what we
25 do is we offer all the employees -- Oh, is that it?

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1 Q. Is that it right there --

2 A. Oh.

3 Q. -- TC meal?

4 A. I'm sorry. I was looking at the "T." I
5 didn't see that.

6 Q. That's okay.

7 A. And that's why, by the way, when we did look
8 at this, it didn't make a lot of sense to us why it
9 was set up that way. So we -- In the newer format,
10 it's much clearer.

11 Base -- Basically, we offer a discounted
12 meal price for all of the -- all of the employees in
13 the company. And -- And so that's basically how it
14 works. It's on a per day shift. Every day that they
15 work, it's -- I -- I believe it's \$3 a day, I think it
16 is, or maybe 3.25, something like that.

17 Q. What if they don't eat at the restaurant?

18 A. Usually, when they don't eat at the
19 restaurant, they inform their manager or they'll
20 inform the admin person who prepares the -- the weekly
21 payroll. And, I mean, I -- I got a call from an
22 employee last week that mentioned to me, "I -- I
23 was -- I'm leaving for lunch today. Is it okay if I
24 don't, you know, get charged for that?" Sure.
25 Absolutely.

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1 Q. Okay. But it's up to the employee to bring
2 that to someone's attention?

3 A. Yes. But my experience is they don't miss a
4 meal.

5 Q. What if they're home sick?

6 A. Then they don't -- They don't pay.

7 Q. There's no deduction if they --

8 A. Yeah. It's only -- it's only -- it's only
9 based -- It's on if they worked. If -- If they worked
10 a shift, then that's -- that's when we . . .

11 Q. Does the payroll system, is it able to
12 identify days when the employee is home sick or on
13 vacation such that that deduction is not made or is
14 that a manual operation of some sort?

15 A. I -- I'm not sure how to answer your
16 question. I mean, if they didn't punch in, then the
17 system wouldn't reflect that they were there.

18 Q. Well, but they may get paid for that day,
19 right, because they may have accrued sick or vacation
20 time?

21 A. No.

22 Q. That's not offered?

23 A. Correct.

24 Q. What if somebody came to work and then went
25 home early, would that be deducted for the -- for the

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1 meal service if they left before lunch?

2 A. No, probably not.

3 Q. How do you know? You say probably not.

4 A. Well, what I -- The reason I would say that
5 is that I think that our -- our rule of thumb is that
6 anybody who's been, you know, on the clock for more --
7 more than four and a half -- four to four and a half
8 hours, I think, that they would -- they would have the
9 deduction. And it's something that the -- the
10 payroll -- not the payroll -- the administrative
11 person, when they're processing the payroll on a
12 weekly basis, you know, they go through the -- they go
13 through it one by one. And -- And if somebody did
14 not, you know, work, if they just punched in and
15 punched out, they wouldn't be charged.

16 Q. And -- But that's a manual operation? That's
17 not something that's built into the software system?

18 A. Yes. I don't believe, at this time, it's
19 built in.

20 Q. And the -- the rule that's applied by the
21 payroll personnel is if an employee was on the clock
22 for four hours, then there was an automatic deduction
23 for lunch; is that correct?

24 A. Correct. And I'd have to verify the four,
25 but I -- I believe it's four. It could be four and a

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1 money off that meal.

2 A. Well, it depends -- I mean, it depends on how
3 you define cost. I mean, if it cost -- the cost of
4 the product, the cost of the labor to produce the
5 product, I mean, I guess it would depend on what
6 they -- what they ordered, I mean.

7 Q. Let -- Let me try to go about it a different
8 way. How did the company go about setting the amount
9 that it deducts from employees for the cost of meals?

10 A. I mean, that's been in place for many years.
11 I can't specifically remember, you know, what the
12 rationale was. I mean, as I recall, I mean, I think
13 we probably took like an average, you know, meal price
14 of maybe 10 to \$12 and -- and tried to take what our
15 normal food cost would be, say 25, 30 percent,
16 depending on what the meal may be, and then applied
17 that percentage to that. So I would -- I would assume
18 that's -- So, in other words, if we ran a -- if the
19 average meal price was \$10, depending on what -- you
20 know, what was ordered, 30 percent would be \$3.

21 Q. And that 30 percent would be the -- the cost
22 of the --

23 A. Of the food itself.

24 Q. -- food itself?

25 A. You know, not including the labor to produce

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1 it.

2 Q. Okay.

3 A. Or any overhead.

4 Q. But what you're -- It sounded like you were
5 kind of assuming that's what was done. But you don't
6 specifically recall that that's how it was calculated
7 or do you?

8 A. I mean, I don't remember the specific, you
9 know, time and date and place where we had that
10 conversation. But that was, I mean, the rationale in
11 general how we figured it out.

12 Q. Okay. There's also, as I understand it, a
13 deduction made from all employees' pay for a meal
14 break. Is that correct?

15 A. Correct.

16 Q. That's true for each of the -- the three
17 shifts?

18 A. Yeah. I would believe it would be, yes.

19 Q. Okay. And the meal break is -- I can't
20 remember if I said it -- but it's 30 minutes, correct?

21 A. Yes.

22 Q. Is the full 30 minutes deducted even if the
23 employee only takes a 20-minute lunch?

24 A. Well, they're instructed to -- You know, once
25 they've, you know, been sent on break or they've asked

BARRERA/MTC, INC.
GEORGE P. CORTEZ

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CHANGES AND SIGNATURE
CAUSE NO. 2008-CI-18763

DEPOSITION OF: GEORGE P. CORTEZ

DATE OF DEPOSITION: November 5, 2010

PAGE	LINE	CHANGE	REASON
8 17 18 47 100	16 11 5, 12 25 15	"cafT" to "café"	Correction – typographical error
25 26 50	10, 16 11, 12 12	"Lydia" to "Lidia"	Correction -misspelled
13	18-23	"Again, the ones that sometimes, you know, happen when a – a customer just, you know appreciated, you know maybe some service that the host staff may have provided to them, you know, if they reported it, I – I couldn't tell you ..." to "Again, the ones that sometimes happen when a customer appreciated some service that the host staff may have provided to them and tipped the host in cash, if they reported the cash tip every time, I couldn't tell you."	Clarification
45	25	"tile" to "title"	Correction – typographical error
47	8-9	"personnel including but limited" to "personnel including but not limited"	Correction
58	9	"It's on if they worked." To "It's only if they worked."	Correction – typographical error
103	16	"Generally, the structure is the same." to "Generally, the structure is the same in that the servers contribute a percentage of gross sales to the tip pool which is then distributed to participating departments, but the percentages contributed are different, the percentages of the tip pool paid to the departments are different and different departments in the restaurants participate in the tip pool."	Clarification
103	24	"Pretty much." to "Pretty much, but the bartenders in the other restaurants sell and serve drinks directly to customers as well as prepare drinks for servers."	Clarification

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1 I, GEORGE P. CORTEZ, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.

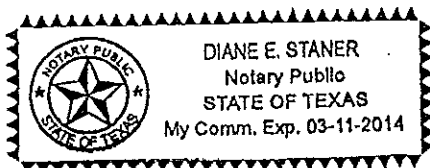
4
 5 George P. Cortez
 6 GEORGE P. CORTEZ

7
 8 THE STATE OF TEXAS)
 9 COUNTY OF BEXAR)
 10

11 Before me, _____, on this day
 12 personally appeared George Cortez, known to me
 13 (or proved to me under oath or through
 14 _____) to be the person whose name is
 15 subscribed to the foregoing instrument and
 16 acknowledged to me that he executed the same for the
 17 purposes and consideration therein expressed.

18 Given under my hand and seal of office
 19 this 13th day of December, 2010.

20
 21 Diane E. Staner
 22 Notary Public in and for the State of Texas



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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF TEXAS
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3 VIRGINIA BARRERA)

4 Plaintiff)

5 v.)

) CIVIL ACTION NO.
) 5:10-cv-665

6 MTC, INC. d/b/a MI TIERRA CAFÉ)
 7 AND BAKERY)

 Defendant)
 _____)

8
 9 REPORTER'S CERTIFICATION
 10 DEPOSITION OF GEORGE P. CORTEZ
 VOLUME 1
 November 5, 2010

11
 12 I, NATALIE HUNSUCKER, a Certified Court
 13 Reporter in and for the State of Texas, hereby certify
 14 to the following:

15 That the witness, GEORGE P. CORTEZ, was duly
 16 sworn by the officer and that the transcript of the
 17 oral deposition is a true record of the testimony
 18 given by the witness;

19 That the deposition transcript was submitted
 20 on November 10, 2010, to the attorney for the
 21 DEFENDANT for examination, signature, and return to
 22 NATALIE HUNSUCKER by December 9, 2010;

23 That the amount of time used by each party at
 24 the deposition is as follows:

25 MR. JEREMI K. YOUNG - 3:41;

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1 That pursuant to information given to the
2 deposition officer at the time said testimony was
3 taken, the following includes all parties of record:

4 MR. JEREMI K. YOUNG, ATTORNEY FOR PLAINTIFF;

5 MR. RAMON D. BISSMEYER, MS. CORA C. MCGOWAN and

6 MR. MARK W. KIEHNE, ATTORNEYS FOR DEFENDANT;

7 I further certify that I am neither counsel
8 for, related to, nor employed by any of the parties in
9 the action in which this proceeding was taken, and
10 further that I am not financially or otherwise
11 interested in the outcome of the action.

12 Further certification requirements will be
13 certified to after they have occurred.

14 Certified to by me this 18 day of

15 November, 2010.

16
17 Natalie Hunsucker
18 NATALIE HUNSUCKER, Texas CSR 4279
19 Expiration Date: 12/31/2011
20 Hoffman Reporting Service
21 Firm Registration No. 93
22 206 East Locust Street
23 San Antonio, Texas 78212
24 Phone: 210.736.3555
25 Fax: 210.736.6679

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FURTHER CERTIFICATION

The original deposition of GEORGE P. CORTEZ,
Volume 1, was/was not returned to the deposition
officer; December 9, 2010

If returned, the attached Changes and
Signature page contains any changes and the reasons
therefor;

If returned, the original deposition was
delivered by regular mail / certified mail to
MR. JEREMI K. YOUNG, Custodial Attorney;

That \$ 1167.80 is the deposition officer's
charges to the PLAINTIFF for preparing the original
deposition transcript and any copies of exhibits;

That the deposition transcript was delivered
in accordance with the Federal Rules of Civil
Procedure.

Certified to by me this ____ day of

_____, 2010.

NATALIE HUNSUCKER, Texas CSR 4279
Expiration Date: 12/31/2011
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